IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1480 OF 2006

In

SUIT (LODGING) NO.2635 OF 2006

Kanayalal Kashiram Kasat & Ors. : Plaintiffs

V/s.

Hemlata Madhusudan Thakur & Ors. : Defendants

And

Taxing Master, High Court, Bombay & Anr. : Defendants

...

Mr.D.A.Barot for the plaintiffs.

Mr.B.M.Gore, Taxing Master (present).

...

CORAM : S.A.BOBDE, J.

DATE : FEBRUARY 14, 2007.

P.C.:

1. By this Chamber Summons, the plaintiffs have questioned the correctness of the decision of the Taxing Master in Suit (Lodging) no.2635 of 2006 dated 19.10.2006. The learned counsel for the plaintiffs restricted the challenge to the decision of the Taxing Master in regard to prayer (c) of the plaint which reads as follows:-

"(c) this Hon’ble Court be pleased to declare

that Deed of Conveyance/Assignment dated 14.05.2002 and Sale Agreement dated 11th June, 2002 (Ex."T") entered into between Defendant Nos.1 and 3 in respect of the suit property namely: New Survey No.1155 Part and City Survey No.95/10, Matunga Division, along with the building known as "ARUDH APARTMENT" situated at 96, Hindu Colony, 3rd Lane, Dadar, Mumbai--400 014 are void, illegal, bad in law, non-est and same are liable to be set aside and cancelled."

By prayer clause (c), the plaintiffs have sought a declaration that the deed of conveyance dated 14.5.2002 and sale agreement dated 11.6.2002 are illegal, bad in law and liable to be set aside and cancelled. The document dated 14.5.2002 is not available with the plaintiffs.

2. The learned Taxing Master has valued the prayer clause (c) at half of the ad valorem fee on the value of the property on the date of presentation of the suit, going by the Stamp Duty Ready Reckoner and market value of flats in Mumbai in 2006. The Taxing Master has calculated the value of the property at Rs.3,11,90,957.50

and has taxed the suit at half of the ad valorem Court fee of Rs.3,00,000/-. Accordingly, the Taxing Master has levied Rs.1,50,000/- as Court fee.

3. Mr.Barot, the learned counsel for the plaintiffs, submitted that the Taxing Master could not have valued the suit on the basis of the market value of the land and the flats, but could have valued the suit on the basis of the compensation or rent payable on the lease-hold rights which are transferred by the agreement dated 11.6.2002.

4. Obviously, the correctness of the value taken by the Taxing Master must be tested on the basis of what is actually transferred by the agreement dated 11.6.2002. If the transfer is only of lease-hold rights, then the contention of the learned counsel for the plaintiffs may be correct, but if the transfer is of the other property also i.e. the flats constructed thereon, then the order of the Taxing Master must be upheld as correct. Admittedly, the suit is valued under section 6(ha).

5. It is, therefore, necessary to consider the terms of the agreement in order to ascertain what is transferred under it. The recitals 14 and 15 read as follows:-

"14. The party of the First Part is

desirous of assigning the all her right, title and interest in the residue of the term of Lease, as also convey all her right, title and interest in the said leasehold land in favour of the party of the Other Part.

15. The party of the first part accordingly agreed to assign the aforesaid lease and Transfer, convey and sell the Leasehold rights, entire Ground floor and ..... with all its apputenant (sic) rights and easements, standing thereon with ..... F.S.I. is available at present on the said Leasehold land if any available in the future, by way of T.D.R. or any change in Govt. Policies or change in rules of the BMC with regard to F.S.I., on the terms and conditions mutually agreed upon between the parties for a total consideration of Rs.4,50,000/- (Rupees Four Lacs Fifty Thousand Only):"

Obviously, from clause 15, it is clear that the parties

agreed for the transfer of not only the leasehold rights but also the entire ground floor and terrace with FSI. The operative clause of the agreement provides:-

> "..... the Vendor doth hereby transfer and assure unto the Purchaser all that piece or parcel of leasehold land situated at C.S. No.95/10, of Matunga Division, Plot No.96, 3rd Lane, Hindu Colony, Arudha Niwas, Dadar, Mumbai 400 014 in the State of Maharashtra and particularly described in the First Schedule hereunder written TOGETHER with all the rights title and interest in the residue term of the said Lease, together with light, liberties, rights, privilege, easements, and appurtenances whatsoever, and ..... any part thereof belonging or in anywise appertaining or usually held or ..... reputed to long or be appurtenant thereto TO HAVE AND TO HOLD all ..... leasehold land, Ground floor, terrace and, and though the present F.S.I. ..... exhausted the Development rights on the existing building available due to any change in ..... Policy with regard to F.S.I. or with regard to T.D.R., and all other premises hereby

granted, released, conveyed and assured or expressed so to be with their appurtenance."

It is clear that the agreement proposed to transfer the lease-hold land, ground floor, terrace and the present F.S.I. which is stated to be exhausted and, therefore, what is transferred is the development rights on the existing building.

6. The Taxing Master has rightly valued the agreement on the basis of the subject-matter and by applying the stamp duty ready reckoner and market value of the flats in Mumbai in 2006. There is, therefore, no merit in this Chamber Summons which is hereby dismissed.

S.A. BOBDE, J.